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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

PACIFIC HANDY CUTTER, INC., and DONALD PACE, also known as DON PACE,

Appellants,

vs.

CITY OF SOUTH EL MONTE, a Municipal corporation, JOSEPH BUSCH, District Attorney of the County of Los Angeles, and the MUNICIPAL COURT OF THE COUNTY OF LOS ANGELES, EL MONTE JUDICIAL DISTRICT,

Respondents.

PETITION FOR WRIT OF CERTIORARI

APPEAL FROM
THE DECISION OF THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

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Opinion of the Court of Appeal, filed December 13, 1973

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A. OFFICIAL AND UNOFFICIAL REPORTS

This is an appeal from a decision of the California Court of Appeal, Second Appellate District, Division 2, dated December 13, 1973, which was unreported. The decision of the Court of Appeal entitled Pacific Handy Cutter vs. City of South El Monte sustained the decision of the Superior Court

of Los Angeles County. The decision of the Court of Appeal is appended hereto as Appendix "A".

B. JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 United States Code, §1257.

The date of judgment sought to be reviewed is December 13, 1973.

A petition for hearing to the Supreme Court of the State of California was made and was denied.

C. QUESTIONS PRESENTED FOR REVIEW

The major question presented for review herein is whether or not a governmental entity may be estopped by reason of its conduct or misrepresentations when those misrepresentations cause one to act in reliance thereon. The facts material to consideration of the questions presented are as follows:

Pacific Handy Cutter, the appellant in this action, is a corporation involved in

light manufacturing. Early in 1967, while Pacific Handy Cutter was contemplating moving its main manufacturing plant to another area, its Executive Vice-President, Donald Pace, entered into some discussions with City Officials of the City of South El Monte.

During the course of the discussions, Mr. Pace advised the officials of the City of South El Monte, particularly Mr. Larson and Mr. Lawson of the Planning Department, that it would be necessary for him to have adequate parking for his facility and that the facility at 2454 North Chico did not have adequate parking.

A lot located to the rear of the premises on North Chico could be used as a parking lot if zoning and a conditional use permit or variance could be granted. Pacific Handy Cutter was willing to purchase the lot if assured of zoning.

The City of South El Monte officials assured Mr. Pace that the requisite zoning or variances would be granted so that he could use the premises to the rear of Chico for a parking lot. In reliance upon such

assurances, Pacific Handy Cutter did remain at 2454 North Chico, and proceeded to purchase the premises described as 2455 Adelia which are located to the immediate rear of the manufacturing plant on North Chico. Thereafter, the house on the premises on Adelia was torn down and a zoning application was made to the City for a variance. The City approved the application in its Planning Commission and Planning Department, but at the time the application came up for hearing in the City Council on appeal from members of the community, community pressures forced the City to reject the zoning application on June 8, 1967. Pacific Handy Cutter was, therefore, left with a worthless vacant lot, no parking lot, and the retention of its facilities in the City of South El Monte without satisfactory parking.

The Adelia lot remained vacant until 1971. Early in 1971, Pacific Handy Cutter acquired another light manufacturing company called Kwikmrk. Pacific Handy Cutter decided it was necessary to consolidate the manufacturing process of both entities in one place. The physical plant on Chico was suitable, but the parking was already

overloaded and could not accommodate additional cars. Accordingly, Pacific Handy Cutter looked elsewhere for space and planned to move out of South El Monte. Mr. Pace advised Messrs. Lawson and Larson of the proposed move due to the lack of parking.

Thereafter, both Messrs. Lawson and Larson in the capacities of agents and employees of the City of South El Monte advised Pacific Handy Cutter that it would be satisfactory for Pacific Handy Cutter to construct a parking lot on the premises on Adelia and that no problems would occur insofar as zoning or criminal prosecution were concerned. Specifically, Pacific Handy Cutter was told (a) to go ahead and build the parking lot; (b) to put up a block wall to make it as far back from the street as possible to make the parking lot as attractive as possible and to take the situation step by step; (c) to build the wall without obtaining any permit or permission from the City of South El Monte, that there would be no permits required; and (d) to go ahead and park cars on the parking lot when completed and that Pacific Handy Cutter would not be bothered by anyone from the

City of South El Monte for parking on the lot.

Based upon the above representations, Pacific Handy Cutter (1) abandoned all further efforts to locate additional facilities for Kwikmrk and Pacific Handy Cutter; (2) moved all facilities of Kwikmrk over to Pacific Handy Cutter's facilities on North Chico; and (3) constructed a parking lot on Adelia at a cost of $7,000.

Commencing in November, 1971, Pacific Handy Cutter began to receive a series of letters from the City of South El Monte advising it that the use of the parking lot on Adelia was an illegal use and Mr. Pace and Pacific Handy Cutter were cited by the City of South El Monte for zoning violations.

On or about August 2, 1971, Pacific Handy Cutter sold to El Monte Properties, both the Chico and Adelia properties and entered into a long-term lease with El Monte Properties. The lease was premised upon the understanding Pacific Handy Cutter had that adequate parking would be accessible and usable on Adelia. The lease is for a period of ten years and Pacific Handy

Cutter is bound under the terms of the lease to the rent, whether or not there is sufficient parking or not.

After filing of the criminal damages, appellants immediately sought to obtain an injunction against the City and the enforcing agencies, prohibiting criminal prosecution and also sought a Writ of Mandate to compel use of the Adelia lot as a parking lot for the terms of the lease.

At the hearing for the preliminary injunction, the general demurrer of the City of South El Monte was sustained without leave to amend and an order of dismissal was duly entered and appealed from.

D. QUESTIONS PRESENTED BELOW

The Federal questions sought to be reviewed insofar as they are based upon the doctrine of fundamental fairness and due process were raised at all stages of the proceedings, including the Points and Authorities filed in the Superior Court, the Brief filed in the Court of Appeals, and the Petition for Hearing in the California Supreme Court. The following

quotations appears in each of the above Points and Authorities and Briefs:

> "In this case the enforcement of the criminal proceedings against these defendants when they have been induced into acting as they did by the representations of the city would be unjust and inequitable and a violation of their rights under the due process clause of the constitution calling for fundamental fairness in dealings between the city and its public."

E. REASONS FOR ALLOWANCE OF THE WRIT

In this present stage of development of the relationship between governmental entities and their citizens the concepts of fundamental fairness play an important part. As the statement of facts presented herein indicates, this petitioner was misled by responsible officers of the City of South El Monte into an intolerable situation whereby it subjected itself to criminal prosecution and severe economic detriment.

There is no overwhelming or overriding public interest that requires the result which the lower courts have sustained. The concept of fundamental fairness inherent to the due process clause of the United States Constitution requires that the city be estopped from prosecuting and persecuting this appellant.

Respectfully submitted,

LAWRENCE TEPLIN

Attorney for Appellants